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10 Gerald L. Righetti

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 GERALD S. RIGHETTI,

15 Plaintiff,

16 v.

17 DR. DUC NGUYEN; IDA GUZMAN;
MARCELLA ZUNIGA; DR. WILLIAM
18 BENDA, JR.; and DR. NEIL RICHMAN,

19 Defendants.
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Case No. C-11-2717 EMC

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Hearing Date: n/a

Time: n/a

Judge: Edward M. Chen

1 Disclosure and discovery activity in this action have involved and will likely continue to
2 involve production of confidential or private information for which special protection from public
3 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
4 Accordingly, the Parties hereby stipulate to and petition the Court to enter the following
5 Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket
6 protections on all disclosures or responses to discovery and that the protection it affords extends
7 only to the limited information or items that are entitled under the applicable legal principles to
8 treatment as confidential. The Parties further acknowledge that this Stipulated Protective Order
9 creates no entitlement to file confidential information under seal and that Civil Local Rule 79-5
10 sets forth the procedures that must be followed and reflects the standards that will be applied
11 when a Party seeks permission from the Court to file material under seal.

12 **1. Parties**

13 Plaintiff Gerald L. Righetti, Defendants Duc Nguyen and Marcella Zuniga (the “State
14 Defendants”), and Defendants William Benda, Jr., M.D. and Neil Richman, M.D., by and through
15 their counsel, stipulate as follows:

16 **2. Purpose**

17 To protect confidential or privileged information intended by the Parties to remain so
18 protected, while facilitating the sharing of information as part of the Parties’ efforts to mediate,
19 settle, or litigate the disputes between them. The Parties recognize that each of them may have
20 documents or information relating to those documents that implicate the Parties’ or others’
21 interests in privacy.

22 **3. Definitions**

23 **a. Information**

24 Information shall be deemed to have a broad meaning, and shall include the contents of
25 documents, electronically stored information, transcripts, and materials. Documents created by a
26 Receiving Party that quote or reflect Confidential Information shall also be deemed to be
27 Confidential Information of the Producing Party, except that such information is excluded from
28 any requirements of destruction or return to the Producing Party.

b. Confidential Information

This stipulation covers information that the Producing Party designates “Confidential” or “Attorneys’ Eyes Only.” Information may be designated as Confidential or Attorneys’ Eyes Only when the Designating Party reasonably believes the information disclosed constitutes, reflects, discloses or contains information that is sensitive or potentially privileged.

c. Designating Party

The party who designates a given piece of information as either Confidential or Attorneys’ Eyes Only.

d. Producing Party

A party or non-party that produces disclosure or discovery material in this action.

e. Receiving Party

A party that receives disclosure or discovery material from a Producing Party.

4. Stipulation

Absent any mandatory process and until the time to provide the information has expired, including making reasonable efforts to acquire an extension, Confidential Information may not be disclosed to any third party by the Receiving Party.

5. Procedure

a. Designation

To designate information as Confidential, a Producing Party must mark it or identify it in a formal manner as such.

b. Marking

All or any part of a document, tangible object, discovery response, or pleading disclosed, produced, or filed by a Producing Party may be designated Confidential or Attorneys’ Eyes Only by marking the appropriate legend (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”) on the face of the document and each page so designated. With respect to tangible items or electronically stored information produced in native format, the appropriate legend shall be marked on the face of the tangible item or media containing electronically stored information, if practicable, or by written notice to the Receiving Party at the time of disclosure, production or

1 filing that such tangible item or media is or contains Confidential Information.

2 **c. Timing**

3 The Producing Party must designate documents and other objects as “Confidential” or
4 “Attorneys’ Eyes Only” before or concurrent with disclosure. All other Parties may designate
5 documents and other objects within fourteen days of the date of disclosure. Parties must
6 designate any deposition testimony as Confidential within fourteen days of receiving the certified
7 transcript of that deposition.

8 **d. Errors**

9 Accidental or inadvertent disclosure of information does not waive the confidential status
10 of such information or any privilege attached thereto. In the event that Confidential or privileged
11 information is inadvertently disclosed, the Producing Party may thereafter reasonably assert a
12 claim or designation of confidentiality or privilege. The Receiving Party shall gather and return
13 all copies of the accidentally or inadvertently produced Confidential or privileged information to
14 the Producing Party, or certify to the Producing Party that it has been destroyed and/or deleted.

15 **e. Privileged Information**

16 Any Receiving Party that encounters any information that is privileged (but for the
17 inadvertent production) and that the Producing Party likely did not intend to produce shall inform
18 the Producing Party promptly. Upon notification that documents contain privileged information,
19 the Receiving Party shall make no use of those documents in the mediation, settlement
20 negotiations, or for any purpose whatsoever, and the Receiving Party shall take reasonable steps
21 to ensure such documents are not accessed or reviewed further, including removing those
22 documents from any review databases. The Receiving Party will take immediate steps to ensure
23 the return or destruction of such documents.

24 **f. Mandatory Process**

25 Upon the receipt of any discovery request, subpoena, public records request, court order,
26 or similar compulsory or mandatory process compelling the production by a Receiving Party of a
27 Producing Party’s Confidential Information, the Receiving Party shall promptly notify the
28 Producing Party of that mandatory process to allow them to assert their interests related to the

1 Confidential Information.

2 **g. Extension of Duties of Confidentiality or Privilege**

3 This Stipulation does not alleviate the Parties' obligations to treat information as
4 confidential, proprietary, work product, or other similar designations, under any other agreements
5 between the Parties.

6 **6. Who**

7 Except as stated further, Confidential Information may be reviewed or used only by:

- 8 a. The Parties (except for documents marked Attorneys Eyes Only);
- 9 b. The presiding Court;
- 10 c. Court reporters (including audio and video);
- 11 d. Special masters;
- 12 e. Mediators;
- 13 f. Parties' counsel, including any in-house counsel, participating in the
14 litigation between the Parties;
- 15 g. Any expert or consultant hired by or working for the Parties in the
16 litigation;
- 17 h. The direct staff of these people; and,
- 18 i. Any other person to whom the Producing Party, in writing, authorizes
19 disclosure.

20 **7. Attorneys' Eyes Only**

21 For security and operation considerations, as well as personal privacy of staff, certain
22 documents may not be shared with inmates at a California prison. Such documents may be
23 designated as Attorneys' Eyes Only as long as there is a legitimate security or operational
24 consideration or such documents are protected by California law or Department of Corrections
25 and Rehabilitation policy. Such documents cannot be shared with, shown to, or otherwise have
26 their specific contents disclosed to any inmate in a California prison, whether a party to this case
27 or not. In all other respects, documents designated as Attorneys' Eyes Only shall be treated as
28 Confidential Information.

1 **8. Where**

2 Confidential Information must be used only in mediation or other ADR processes or in
3 litigation of the Parties' present dispute and any immediately derivative dispute (e.g., enforcement
4 of a settlement agreement).

5 **9. Use**

6 Any party seeking to disclose any Confidential Information either (i) by attaching such
7 Confidential Information as an exhibit to any court filing, or (ii) disclosing the content of such
8 Confidential Information in any court filing will either move to seal the documents pursuant to
9 Local Rule 79-5 or seek permission from the Producing Party. If the Parties are unable to resolve
10 a dispute concerning whether Confidential Information is properly designated as Confidential
11 after meeting and conferring, a Receiving Party may seek a court order that the Confidential
12 Information at issue does not reasonably constitute, reflect, disclose or contain information that is
13 sensitive or potentially privileged. If a party seeks to reference Confidential Information during a
14 hearing, that party shall meet and confer with the Designating Party in advance in an attempt to
15 resolve any concerns over disclosure of Confidential Information. In the event no such resolution
16 can be reached, the Designating Party may seek a court order closing the courtroom. Upon
17 request of the party seeking disclosure, the Parties shall meet and confer regarding the continued
18 designation of any Confidential Information or whether any appropriate redactions may resolve
19 the need to file documents under seal. The Parties shall also meet and confer prior to trial on the
20 continued designation of any Confidential Information as such and the appropriate mechanisms to
21 use such exhibits, including use of redactions or presentation and discussion of the documents in
22 a manner that allows full consideration by the judge and jury but nevertheless protects
23 information from being disclosed to the gallery. In the event that a Court denies a motion to seal,
24 a request to clear the Courtroom, or other similar request, the party seeking to use the
25 Confidential Information may use that information publicly as if it were non-confidential, and no
26 further ruling from the Court is required regarding that information's status.

27 **10. Disputes**

28 Each of the Parties stipulates that it shall be responsible for the conduct of the persons or

1 entities that it allows, deliberately or otherwise, to access Confidential Information. California
2 law shall apply to that dispute and the interpretation of the substance of this agreement.

3 **11. Duration**

4 This Stipulation shall remain in effect indefinitely. Within thirty days of the termination
5 of the dispute between the Parties, whether by judgment dismissal, or other dispositive resolution,
6 all Confidential Information shall be gathered and returned to the Producing Party, or the
7 Receiving Party will certify in writing to the Producing Party that the Confidential Information
8 has been destroyed and/or deleted.

9 **12. Signatures and Counterparts**

10 This Stipulation may be executed in any number of counterparts, each of which will be
11 deemed an original and all of which together shall constitute a single instrument. Facsimile and
12 electronic signatures shall have the same force and effect as original signatures.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: June 24, 2013

Plaintiff Gerald L. Righetti

3 By: /s/ Dixie L. Noonan

4 Dixie L. Noonan
5 O'Melveny & Myers LLP

6 Dated: June 24, 2013

Defendant Neil Richman, M.D.

7 By: /s/ Robert D. Sanford

8 Robert D. Sanford
9 Supple & Canvel, LLP

10 Dated: June 24, 2013

Defendant William Benda, Jr., M.D.

11 By: /s/ Brad Hinshaw

12 Brad Hinshaw
13 Hinshaw, Marsh, Still & Hinshaw

14 Dated: June 24, 2013

State Defendants

15 By: /s/ Micah C.E. Osgood

16 Micah C.E. Osgood
17 Office of California Attorney General

18 FILER'S ATTESTATION

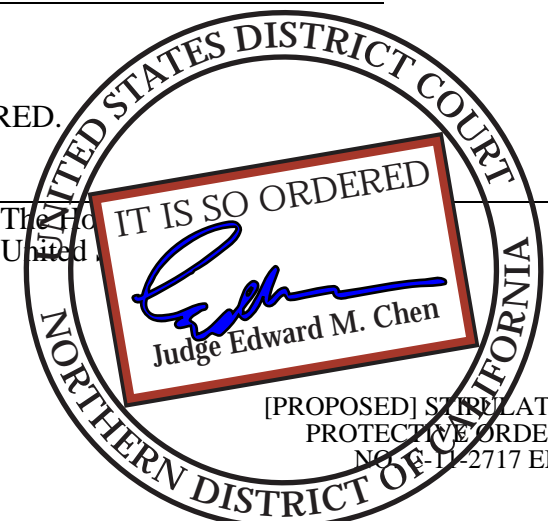
19 Pursuant to Local Rule 5-1(i)(3), I, Dixie L. Noonan, attest that I have obtained the
20 concurrence of Brad Hinshaw, Robert Sanford, and Micah Osgood in the filing of this document
21 and that I have and will maintain records supporting this concurrence for production as required.

22 /s/ Dixie L. Noonan

23
24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 DATED: 6/25/13

26 The Honorable
27 United States District Judge



28 [PROPOSED] STIPULATED
PROTECTIVE ORDER –
NO. 11-2717 EMC